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STEVEN W. STEWART
DIGIMARC CORPORATION
19801 SW 72ND AVENUE
SUITE 100
TUALATIN, OR 97062

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OFFICE OF PETITIONS

In re Application of
Robert L. Jones
Application No. 09/747,735
Filed: December 22, 2000
Attorney Docket No. P0539

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ON PETITION

This is a decision on the petition under 37 CFR 1.181(a), filed by facsimile transmission on October 30, 2002, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is granted.

This application was held abandoned for failure to timely reply to the Notice to File Missing Parts of Nonprovisional Application, mailed February 12, 2001, which set a two month period for submitting an executed oath or declaration and the \$130 surcharge for the late filing of the oath or declaration. No reply having been received in the file, a Notice of Abandonment was mailed on September 26, 2002.

Petitioner states that a reply to the Notice was in fact timely filed. To support this assertion, petitioner has submitted a copy of a return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on March 5, 2001 of, *inter alia*, a copy of Notice to File Missing Parts of Nonprovisional Application, a Declaration for Patent Application and a check for \$130.

The correspondence acknowledged as having been received in the USPTO on March 5, 2001 was not in the record of the instant application file. However, as noted by petitioner, the copy of the transmittal letter and the stamped return postcard bear

the incorrect application number. The file bearing the application number appearing on the transmittal letter and stamped return postcard was obtained and the transmittal letter and copy of Notice to File Missing Parts were located therein, which have now been placed in the instant application. The Declaration for Patent Application was not found among the papers in the file bearing the application number appearing on the transmittal letter.

However, MPEP 503 states that "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Additionally, under current Office procedure, a response that has an incorrect application number is handled in accordance with MPEP §§ 502 and 508.03. If a paper having an incorrect application number contains sufficient information to identify the correct application and was timely filed, the holding of abandonment will be withdrawn. In reviewing the papers submitted, it is concluded that the information contained thereon was sufficient to associate the papers with the instant file. Accordingly, it is concluded that a reply to the Notice of February 12, 2001 was timely received in the USPTO.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status. The Declaration for Patent Application filed with the instant petition will be accepted in place of the Declaration acknowledged as having been received in the USPTO on March 5, 2001.

This application is being forwarded to the Office of Initial Patent Examination for pre-examination processing.



Frances Hicks

Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner

for Patent Examination Policy

(703) 305-8680